

## REMARKS

The Applicant appreciates the courteous and complete examination of the application by the Examiner. In view of the foregoing amendments and the following remarks, a reconsideration of the instant application is respectfully requested.

In order to expedite the prosecution of this application, claims 54 and 85 have been canceled without prejudice or disclaimer of the subject matter thereof, in favor of Applicant's right to pursue the cancelled claims in a continuing application filed at a later date, thereby permitting the remaining allowed claims to issue as a patent. Claims 44 and 84 has been amended to more completely cover certain aspects of the Applicant's invention. Claims 44-53, 55-84 and 86 are now in this application.

### Regarding the Specification

The Applicant appreciates the opportunity to amend the specification. A new CROSS-REFERENCE TO RELATED APPLICATIONS section has been added after the title and before the Field of the Invention section heading, thereby complying with 37 CFR 1.77.

### Regarding the Claims

#### *Allowable Subject Matter*

The Examiner stated that claims 81-83 are allowed, and objected to claims 54-59, 65-68, 71-73, 77, 85 and 86 as being dependent upon a rejected base claims, but would be allowable if rewritten.

#### *Regarding the § 102 Claim Rejections*

With regards to the Examiner's following § 102 rejections, the Applicant requests that the Examiner reconsiders his rejections of the present invention in view of the well established principle that small differences in a crowded art can constitute patentable improvement. See *In re Baum*, 51 USPQ 470 (CCPA 1941) and *In re Lange*, 126 USPQ 365 (CCPA 1960). In considering this principle, the Applicant would also request that the Examiner take note to the court decision which notes that "apparent simplicity has been held to furnish strong argument for patentability where, as here, a need has

existed for a structure of the nature disclosed and claimed. The fact that a solution to a problem is simple, or appears to be simple when viewed in retrospect, does not mean that the solution was obvious when it was conceived.” See *Ellipse corp. v. Ford Motor Co.*, 171 USPQ 513.

The Examiner rejected claims 44-47, 60, 69, 70, 78, 79 and 80 under 35 U.S.C. 102(b) as being anticipated by Huvet et al., but states that claim 54 “would be allowable if rewritten in independent form”.

The Applicant has amended independent claim 44 to include the allowable subject matter of claim 54, now cancelled, thereby putting amended claim 44 in condition for allowance. Claims 45-47, 60, 69, 70, 78 and 79 are felt to patentably distinguish over the prior art references because of their above-mentioned dependency from amended claim 44.

The Examiner rejected claim 84 under 35 U.S.C. 102(e) as being anticipated by Abe, but states that claim 85 “would be allowable if rewritten in independent form”.

The Applicant has amended independent claim 84 to include the allowable subject matter of claim 85, now cancelled, thereby putting amended claim 84 in condition for allowance. Claim 86 is felt to patentably distinguish over the prior art references because of its above-mentioned dependency from amended claim 84.

#### *Regarding the § 103 Claim Rejections*

With regards to the Examiner’s following § 103 rejections, as the Supreme Court recently explained “a patent composed of several elements is not proved obvious merely by demonstrating that each element was, independently, known in the prior art.” *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S., 82 U.S.P.Q.2d 1385, 1396 (2007). Moreover, “[r]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *Id.* (citing *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006) cited with approval in *KSR*). “To facilitate review, this analysis should be made explicit.” *Id.* Furthermore, “[a] factfinder should be aware, of

course, of the distortion caused by hindsight bias and must be cautious of arguments reliant upon ex post reasoning. See *Graham*, 383 U. S., at 36 (warning against a ‘temptation to read into the prior art the teachings of the invention in issue’ and instructing courts to ‘guard against slipping into the use of hindsight’ (quoting *Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co.*, 332 F. 2d 406, 412 (CA6 1964))).” *Id.* at, 82 U.S.Q.P.2d at 1397.

The Examiner rejected claims 49 and 52 under 35 U.S.C. 103(a) as being unpatentable over Huvet et al. in view of Chou et al., but states that claim 54 “would be allowable if rewritten in independent form”.

The Applicant has amended claim 44, which claims 49 and 52 depend from, to include the allowable subject matter of now cancelled claim 54, thereby putting amended claim 44 in condition for allowance. Claims 49 and 52 are felt to patentably distinguish over the prior art references because of their above-mentioned dependency from amended claim 44.

The Examiner rejected claims 53 and 62 under 35 U.S.C. 103(a) as being unpatentable over Huvet et al. in view of Hooijer et al., but states that claim 54 “would be allowable if rewritten in independent form”.

The Applicant has amended claim 44, which claims 53 and 62 depend from, to include the allowable subject matter of now cancelled claim 54, thereby putting amended claim 44 in condition for allowance. Claims 53 and 62 are felt to patentably distinguish over the prior art references because of their above-mentioned dependency from amended claim 44.

The Examiner rejected claims 61, 63 and 64 under 35 U.S.C. 103(a) as being unpatentable over Huvet et al. in view of Leeb et al., but states that claim 54 “would be allowable if rewritten in independent form”.

The Applicant has amended claim 44, which claims 61, 63 and 64 depend from, to include the allowable subject matter of now cancelled claim 54, thereby putting amended claim 44 in condition for allowance. Claims 61, 63 and 64 are felt to

patentably distinguish over the prior art references because of their above-mentioned dependency from amended claim 44.

The Examiner rejected claims 50 and 51 under 35 U.S.C. 103(a) as being unpatentable over Huvet et al. in view of Chou et al, further in view of Hooijer et al., but states that claim 54 “would be allowable if rewritten in independent form”.

The Applicant has amended claim 44, which claims 50 and 51 depend from, to include the allowable subject matter of now cancelled claim 54, thereby putting amended claim 44 in condition for allowance. Claims 50 and 51 are felt to patentably distinguish over the prior art references because of their above-mentioned dependency from amended claim 44.

The Examiner rejected claim 48 under 35 U.S.C. 103(a) as being unpatentable over Huvet et al. in view of Abe, but states that claim 54 “would be allowable if rewritten in independent form”.

The Applicant has amended claim 44, which claim 48 depends from, to include the allowable subject matter of now cancelled claim 54, thereby putting amended claim 44 in condition for allowance. Claim 48 is felt to patentably distinguish over the prior art references because of its above-mentioned dependency from amended claim 44.

## **Conclusion**

Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, the Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. The Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably

infer that the Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Applicant has endeavored to address all of the Examiner's concerns as expressed in the Office Action. Accordingly, amendments to the claims, the reasons therefor, and arguments in support of patentability of the pending claim set are presented above. Any claim amendments which are not specifically discussed in the above-remarks are made in order to improve the clarity of claim language, to correct grammatical mistakes or ambiguities, and to otherwise improve the clarity of the claims to particularly and distinctly point out the invention to those of skill in the art. Finally, Applicant submits that the claim limitations above represent only illustrative distinctions. Hence, there may be other patentable features that distinguish the claimed invention from the prior art.

With the above amendments being fully responsive to all outstanding rejections and formal requirements, it is respectfully submitted that the claims are now in condition for allowance, and a notice to that effect is earnestly solicited. Should the Examiner feel that there are further issues which might be resolved by means of telephone interview, the Examiner is cordially invited to telephone the undersigned at (403) 444-5695, or email at davidguerra@internationalpatentgroup.com

No additional fee is due.

Respectfully Submitted,

/David A. Guerra/

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#### **CERTIFICATE OF TRANSMISSION/MAILING**

I hereby certify that this correspondence is being facsimile transmitted to the USPTO, electronically submitted using EFS-Web, or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450.

On (Date) 06/23/2009 by David A. Guerra /David A. Guerra/